

FEDERAL CIRCUIT COURT OF AUSTRALIA

*IQBAL v MINISTER FOR IMMIGRATION &
ANOR*

[2016] FCCA 3242

Catchwords:

MIGRATION – Application for review of decision of Migration Review Tribunal (**Tribunal**) affirming decision of delegate not to grant applicant a Student (Temporary) (Class TU) visa – applicant provided bogus document – whether Tribunal erred in determining whether to waive criterion requiring that the applicant not submit a bogus document – whether the Tribunal failed to consider whether the document it found was a bogus document had the quality of purposeful falsity – no jurisdictional error.

Legislation:

Migration Act 1958 (Cth), s. 97

Migration Regulations 1994 (Cth), Schedule 2, cl. 573.224

Migration Regulations 1994 (Cth), Schedule 4, cl. 4020

Cases cited:

Kaur v Minister for Immigration and Border Protection [2014] FCA 1276

Mudiyanselage v Minister for Immigration & Citizenship [2012] FMCA 887

Trivedi v Minister for Immigration and Border Protection (2014) 220 FCR 169

Vyas v Minister for Immigration, Multicultural Affairs & Citizenship [2013]
FCCA 1226

Applicant: MUHAMMAD JAVED IQBAL

First Respondent: MINISTER FOR IMMIGRATION &
BORDER PROTECTION

Second Respondent: MIGRATION REVIEW TRIBUNAL

File Number: SYG 2751 of 2014

Judgment of: Judge Manousaridis

Hearing date: 10 November 2015

Delivered at: Sydney

Delivered on:

14 December 2016

REPRESENTATION

Counsel for the Applicant:

Mr M Jones

Solicitors for the Applicant:

Parish Patience Immigration Lawyers

Counsel for the Respondents:

Ms A B Douglas-Baker

Solicitors for the Respondents:

DLA Piper Australia

ORDERS

- (1) The Administrative Appeals Tribunal is substituted for the Migration Review Tribunal as the second respondent.
- (2) The application is dismissed.

(i)

(ii)

(iii)

FEDERAL CIRCUIT COURT

OF AUSTRALIA

AT SYDNEY

SYG 2751 of 2014

MUHAMMAD JAVED IQBAL

Applicant

And

MINISTER FOR IMMIGRATION & BORDER PROTECTION

First Respondent

MIGRATION REVIEW TRIBUNAL

Second Respondent

REASONS FOR JUDGMENT

Introduction

1. The applicant, a national of Pakistan, seeks judicial review of a decision of the second respondent (**Tribunal**) affirming the decision of a delegate of the first respondent (**Minister**) not to grant the applicant a Student (Temporary) (Class TU) visa (**Student Visa**).

2. Background

3. The applicant applied for a Student Visa on 13 December 2012. To have been entitled to a Student Visa, the applicant had to satisfy, among other things, cl.573.224 of Schedule 2 to the *Migration Regulations 1994* (Cth) (**Regulations**). That required that, at the time of decision,

the applicant had to satisfy, among other things, public interest criterion 4020 (**PIC4020**).

4. PIC4020(1) relevantly provides as follows:

5. There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister . . . a bogus document or information that is false or misleading in a material particular in relation to:

6. (a) the application for the visa; or

7. (b) a visa that the applicant held in the period of 12 months before the application was made.

8. The expression “*bogus document*” was, at the relevant time, defined in s.97 of the *Migration Act 1958* (Cth), but it is not necessary to set out that definition.

9. The requirement of PIC4020(1) could be waived in the circumstances stated in PIC4020(4), which relevantly provides:

10. The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) . . . if satisfied that:

11. (a) compelling circumstances that affect the interests of Australia; or

12. (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;

13. justify the granting of the visa.

14. By an email sent on 17 May 2013 a delegate of the Minister invited the applicant to comment on information the Department of Immigration and Citizenship (as the Department of Immigration and Border Protection was then called) (**Department**) obtained that indicated that a bank statement the applicant provided in support of his application for a Student visa was a bogus document.¹ The applicant responded by

¹ CB80-83

email sent on 14 June 2013.² He apologised for having “*been made to submit the false documents by my brother*”, stating that “*it is all*” a “*family dispute*”. The applicant also stated that his “*mother has submitted the detailed affidavit how it is happened*”. That is a reference to a letter that appears to have been written by the applicant’s mother (**mother’s affidavit**).³ The mother’s affidavit included the following explanation (errors in original):

15. I would like to tell the whole story what happened to the funds. We have the 5 acre orchard farm in the village. I gave that farm or lease to the contractor for four years and receive the sum of 7,000,000.00 Pak RS.

16. He gave me money and I gave that money to my son name [MZI] to deposit in the bank and make the appropriate arrangement for the finance. My son is a married man and he has wife and kids as well. I have not allocated the property to my kids at the moment. He thought, I am spending a lot of money on [the applicant] and this money is going from the mutual Account.

17. In spite of, he deposited the money in the bank and makes the financial arrangement for his brother he bought the property on her wife name and arranged the false document on his own name and sent those documents tho his brother. Even all this happened, I cannot go to the police to make the Report because he is my son.

18. The applicant also provided a statutory declaration in which he stated the following:⁴

19. Thanks for giving me the opportunity to make the comment on my visa application.

20. First of the all [sic], I would like to apologies [sic] that my brother has provided the false statement of funds to me and I have forwarded it to DIAC. I really did not believe that my own brother is changed so much after marriage. . . .

² CB84

³ CB90-91

⁴ CB96

21. *But time changed so quickly and I think he find himself in the situation where money is coming for me and he has the kids as well to whom he has to pay for education and other essentiality [sic] of life. It is come to my knowledge that he has bought some property on his wife name so he feels more secure from his kids' point of view.*

22. On 9 August 2013 the delegate refused to grant the applicant a Student Visa.
23. The applicant applied to the Tribunal for review of the delegate's decision. On 16 June 2014 the Tribunal sent a letter to the applicant in which it invited the applicant to comment on or respond to particulars of information.⁵ The information was the applicant's having provided to the Department bogus documents. Also by letter dated 16 June 2014 the Tribunal invited the applicant to appear before it to give evidence and present arguments. The applicant responded by fax sent on 24 June 2014 in which he said he was "*not aware the document was false*".⁶ The applicant also said his brother sent the document to the applicant, and "*I sent it to the department with good faith*", and requested that the Tribunal "*proceed with the hearing*".

24. Hearing before Tribunal

25. At the hearing, the Tribunal explained to the applicant the delegate rejected his application for a Student Visa because the Department concluded the applicant had submitted a bogus document. The Tribunal also explained to the applicant that even though he may not have known the document he submitted was bogus, that made no difference.⁷ The Tribunal member then spoke about waivers. Because the applicant relies on what the Tribunal said about waivers at the hearing, it will be necessary to set out what the Tribunal said.
26. The Tribunal read the text of PIC4020(4). The Tribunal said the applicant should note that "*these waivers relate to compelling or compassionate and compelling circumstances affecting someone in Australia, not yourself*".⁸ The Tribunal then referred to "[t]he first

⁵ CB141

⁶ CB147

⁷ Transcript, page 2.5-45. The transcript is annexed to the affidavit of W David.

⁸ Transcript, page 3.10

provision”. That must be a reference to cl.4020(4)(a), namely, “*compelling circumstances that affect the interests of Australia*”. The Tribunal said this is “*fairly difficult to meet because it’s compelling circumstances that affect the interests of Australia*”.

27. The Tribunal then said that “[t]hese provisions” have not been defined by the legislation, but there is “*some judicial exploration of the issue*”. The Tribunal also referred to the Department’s policy guidelines. The Tribunal said it was not bound by the guidelines, but the Tribunal does look at them “*because they provide a guide as to the kind of situations that might apply*”.⁹

28. The Tribunal returns to “*compelling circumstances that affect the interests of Australia*”. The Tribunal said (emphasis added):¹⁰

29. *It relates to the country of Australia, so an applicant to be able to use this waiver would have to indicate that if they weren’t given the visa that Australia’s interests would suffer in some significant way, **for example**, bilateral relations between our government and another government would be affected, or trade and business opportunities would be affected if that person were not permitted to remain in the country, **things like that**.*

30. At this point, the Tribunal asked the applicant:¹¹

31. *So is there anything in your circumstances which would lead you to believe that if you didn’t get the visa Australia’s relationship with your country would suffer?*

32. The applicant said he did not think there is “*any situation like this*”.¹²

33. The Tribunal then said that the only other thing is the “*other provision*”, which must be a reference to cl.4020(4)(b). The transcript records the following (emphasis added):¹³

34. *Q. . . . Like I said, the focus is on the person who’s here, the person who will be left behind if the applicant were not to be*

⁹ Transcript, page 3.25

¹⁰ Transcript, page 3.30-35

¹¹ Transcript, page 3.35-40

¹² Transcript, page 3.40

¹³ Transcript, pages 3.45-4.20

*granted a visa. So the explanatory statement which introduced the legislation to government basically said that it envisaged situations whereby a parent in Australia would be separated from their child, **for example**, if the child were to be removed with the non-resident parent and therefore they'd be separated, and they might not have the opportunity to see each other again for a few years. Other **situations** which fall into this category are where the applicant has family members in Australia who are emotionally . . . or financially dependent on that person, and if this person were not to be granted the visa, and they had to leave the country, then this family, partner, and children possibly, would suffer serious financial or emotional detriment. Then there are family reasons, **for example**, where there's been an unexpected serious or fatal family situation for which the applicant had no control over, and **situations** where somebody has been incapacitated or the death of a partner or a child, or another member of a family unit. **So we're talking about fairly serious situations** where an Australian citizen et cetera, a permanent resident and New Zealand eligible resident, would be affected. Is there anything in your circumstances that might satisfy the requirements of this waiver?*

35. *A. No, my – nope, I don't have anything like that situation, no. On that --*

36. *Q. So you haven't – you're not in a relationship with someone or maybe you don't have any children here in Australia? Anything like that?*

37. *A. Nope.*

38. Tribunal's decision

39. The Tribunal found the applicant did not meet PIC4020(1) because the applicant provided a bogus document and false information to the Department in support of his application for a Student Visa.

40. When considering whether PIC4020(1) should be waived, the Tribunal referred to the judgment of Judge Raphael in *Iyas v Minister for Immigration, Multicultural Affairs & Citizenship*,¹⁴ and the judgment of

¹⁴ [2013] FCCA 1226

Emmett FM (as her Honour then was) in *Mudiyanselage v Minister for Immigration & Citizenship*.¹⁵ The Tribunal then noted it considered whether there are compelling circumstances that affect the interests of Australia, or compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and that the applicant “*indicated at the hearing that no such circumstances applied to him*”.¹⁶ The Tribunal concluded PIC4020(4) did not apply to the applicant.

41. Grounds of application

42. The application contains four grounds of application.

43. *Ground 1*

44. Ground 1 is as follows:

45. *The Tribunal misunderstood the function of judicial review in respect of another decision of the Tribunal.*

46. *Particulars*

47. *The Tribunal referred to the outcomes of judicial review of other Tribunal decisions where the Court had not found jurisdictional error. The Tribunal considered those judgments to be endorsements of the reasoning of the other Tribunal’s.*

48. This ground depends on what the Tribunal said about *Vyas* and *Mudiyanselage*. Of *Vyas*, the Tribunal said:¹⁷

49. *the Court found no error in the Tribunal’s findings, whilst accepting that it would be disadvantageous to an Australian business to lose the applicant as an employee, it was not a compelling or compassionate circumstance as the cost to the business of recruiting, training and replacing a staff member was an ordinary aspect of the operation of almost all business which occurred on an ongoing basis. In the same case, the Court also found no error in the Tribunal’s finding that, whilst it would be distressing for the applicant and her husband to be separated*

¹⁵ [2012] FMCA 887

¹⁶ CB161, [16]

¹⁷ CB161, [14]

from their family members in Australia who would be saddened by their departure, it would not have such a 'deleterious' effect such that it cause the family members to 'totally break down'.

50. The Tribunal said the following about *Mudiyanselage*:¹⁸

51. In Mudiyanselage v MIAC the Court found no error in the Tribunal's acceptance of the applicant's claims to have worked unpaid for over a year and to have been a victim of fraud and noted her position as a graphic pre-press tradesperson at Australia Post but, having regard to the ordinary meaning of the terms 'compassionate' and 'compelling' and relevant departmental policy, found these factors did not constitute compelling and compassionate circumstances that affected the interests of Australia or of an Australian citizen, permanent resident or eligible New Zealand citizen.

52. In his written submissions, the applicant submits these passages indicate the Tribunal considered that the observations the Court made about the Tribunal's decisions in *Vyas* and *Mudiyanselage* constituted an endorsement of the approach the Tribunal took in those cases, and treated the Tribunal's findings in those cases "*as authority binding on the Tribunal in respect of an entirely different case*" and, by doing so, "*the Tribunal misunderstood the role of the Court in judicially reviewing a decision of an administrative decision maker such as the Tribunal*".¹⁹ Mr Jones, who appeared for the applicant, submitted to me:²⁰

53. when one goes back to the transcript and it would appear that the tribunal has dismissed the possibility that circumstances arising from the effect on an employer or the effect on family could be something that was being submitted by the applicants as being compassionate or compelling circumstances but that it rejected because it believed that the principle of law had been established that those things could not amount to compassionate or compelling circumstances . . . So it was basically going through from the court decisions, from the judicial

¹⁸ CB161, [15]

¹⁹ *Outline of submissions for the Applicant*, [15]

²⁰ Transcript, page 7.40-8.10

determinations, back to the tribunal's findings in the two cases there and saying that those tribunal's findings have therefore been raised to the level of principles of law.

54. I do not accept these submissions. First, that the Tribunal summarised the effect of two decisions of this Court cannot by itself reasonably indicate the Tribunal was of the view that the factors the Tribunal in those cases did not consider constituted compassionate or compelling circumstances could never constitute such circumstances. The Tribunal simply summarised what the Court said in *Vyas* and *Mudiyanselage*. Second, there is nothing in the Tribunal's discussion of PIC4020 at the hearing that could suggest the Tribunal was of the view that the matters the Tribunal in *Vyas* and *Mudiyanselage* considered not to constitute compassionate or compelling circumstances could not, in the case of the applicant, be considered to constitute such circumstances. Third, there is nothing to suggest there was before the Tribunal any matter that, in *Vyas* and *Mudiyanselage*, the Tribunal considered not to be compelling circumstances. After the Tribunal explained to the applicant the waiver provisions, and identified the types of circumstances that could give rise to the exercise of the discretion to waive PIC4020(1), the applicant said no such circumstances applied to him. Thus, there was no occasion for the Tribunal to consider, in the circumstances of the application before it, whether matters of the sort the Tribunal considered in *Vyas* and *Mudiyanselage* as not constituting compassionate or compelling circumstances should or should not be considered to constitute compassionate or compelling circumstances in the case of the applicant.

55. Ground 1, therefore, fails.

56. *Grounds 2*

57. Ground 2 is as follows:

58. *The Tribunal misinterpreted the meaning of the expression "compelling circumstances that affect the interests of Australia" in cl 4020(4)(a) of Schedule 4 to the Migration Regulations 1994.*

59. *Particulars*

60. *The Tribunal applied an unjustifiably narrow test of what . . . the interests of Australia might be, and which circumstances might affect those interests.*

61. In his written submissions, the applicant submits the Tribunal's explanation of PIC4020(4)(a) was one in which the Tribunal identified only those circumstances the Tribunal considered could fall within PIC4020(4)(a). In his oral submissions, Mr Jones submitted that the Tribunal incorrectly limited the circumstances in which PIC4020(4)(a) could apply, and that what the Tribunal ought to have done, but did not do, is to have "*left the matter open*" and simply ask whether the applicant thought there are any compelling circumstances that affect the interests of Australia.
62. I do not accept the applicant's submissions. First, although the Tribunal gave specific examples of what might constitute compelling circumstances that affect the interests of Australia, the Tribunal did not represent, and could not reasonably be taken to have been of the view, that the examples it gave were the only circumstances that could constitute compelling circumstances that affect the interests of Australia. As the passage from the transcript of the hearing I have set out earlier in these reasons show, the Tribunal referred to Australia's interests suffering "*in some significant way*", and that it identified "*for example*" two circumstances which could be considered to affect Australia's interests "*in some significant way*". Further, the Tribunal used the expression "*things like that*", which indicates that, so far as the Tribunal was concerned, the circumstances that could amount to compelling circumstances that affect the interests of Australia were not restricted to the examples it gave.
63. Even if, however, the applicant is correct, and the Tribunal held an incorrect construction of PIC4020(4)(a), what are the consequences? The applicant does not suggest that, had the Tribunal "*left the matter open*", and simply asked the applicant whether he thought there are any compelling circumstances that affect the interests of Australia, the applicant would have given a different answer to the one he actually gave, namely, he did not think there was "*any situation like this*".²¹ Nor

²¹ Transcript, page 3.40

does the applicant suggest he would have conducted his case before the Tribunal differently from the manner in which he did conduct his case.

64. There is nothing in the material that is before me that suggests the applicant would have given a different answer to the one he gave at the hearing. Further, it is relevant that in its letter of 16 July 2014, the Tribunal informed the applicant that the requirements of PIC4020 “*may be waived in certain situations if*”, among other things, “*it is found that there are compelling circumstances that affect the interests of Australia*”.²² That “*left the matter open*”, to use Mr Jones’ words. In his response of 24 June 2014,²³ however, the applicant said nothing about any compelling circumstances that affect the interests of Australia.

65. Ground 2, therefore, also fails.

66. *Ground 3*

67. Ground 3 is as follows:

68. *The Tribunal misdirected the Applicant in a way that denied him the opportunity to present arguments and evidence in relation to the issues in the review.*

69. *Particulars*

70. *The Tribunal’s explanation to the Applicant as to what might constitute compassionate or compelling circumstances within the meaning of cl 4020(4)(b) of Schedule 4 was misleading and inaccurate.*

71. In his written submissions, the applicant submits that the examples the Tribunal gave of circumstances that fell within PIC4020(4)(b) “*could only be understood as an exhaustive list of the types of circumstances that would fall within the provision*”²⁴ and “[t]he applicant was effectively denied the opportunity of putting any alternative claims for consideration”.²⁵ I do not accept that submission. The passage from the transcript of this part of the hearing before the Tribunal I have set out earlier in these reasons shows the Tribunal uses the words “*for*

²²CB141

²³CB147

²⁴Outline of submissions for the Applicant, [20]

²⁵Outline of submissions for the Applicant, [21]

example” and “*situations*”. The Tribunal cannot reasonably be taken to have presented the applicant with any closed set of examples.

72. Even if, however, the applicant is correct, and the Tribunal held an incorrect construction of PIC4020(4)(b), there is nothing to suggest the applicant would have conducted his case before the Tribunal differently. In its letter dated 16 June 2014, the Tribunal informed the applicant that the requirements of PIC4020 could be waived if it is found, among other things, there are “*compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, which will justify the granting of the visa*”.²⁶ In his response of 24 June 2014,²⁷ however, the applicant said nothing about any compassionate or compelling circumstances that would affect the interests of such classes of people.
73. The applicant further submits the Tribunal’s erroneous construction of PIC4020(4)(b) restricted the applicant’s opportunity to present evidence and arguments. The applicant does not identify the evidence or arguments the applicant says he may have presented had the Tribunal not expressed to the applicant what the applicant submits was a restrictive construction of PIC4020. In my opinion, the applicant would not have presented any evidence or arguments different from the evidence and arguments he presented to the Tribunal. That is apparent from the response the applicant gave to the Tribunal’s letter dated 16 June 2014 where, as I have already noted, the Tribunal informed the applicant of the possibility of PIC4020 being waived if there were compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
74. Ground 3, therefore, also fails.
75. *Ground 4*
76. Ground 4 is as follows:
77. *The Tribunal failed to make an essential finding in respect of the application of cl 4020.*

²⁶ CB141

²⁷ CB147

78. *Particulars*

79. *The Tribunal failed to determine whether the alleged bogus documents had the necessary quality of purposeful falsity to bring it within the criterion in cl 4020.*

80. In his written submissions, the applicant submits the Tribunal did not consider whether the document it found to be bogus was the product of any purposeful falsity.²⁸

81. In his oral submissions, Mr Jones submitted the Tribunal made the same error the Tribunal was found to have made in *Kaur v Minister for Immigration and Border Protection*.²⁹ In that case, Barker J found the Tribunal made a jurisdictional error because it did not ask whether the information contained in the document in question had the necessary quality of “purposeful falsity”; rather, the Tribunal “*approached the matter on the basis that the relevant information was objectively false or misleading and it was not relevant whether in fact it misled anyone*”.³⁰ Mr Jones relied on the following passage from the transcript of the hearing before the Tribunal (applicant’s emphasis):³¹

82. *There are some waivers, which I’m going to talk to you about in a minute, but in terms of, if you like, avoiding the provision by saying that somebody else gave you the document doesn’t make any difference, **whether it was done innocently**, or even without you knowing, you’re still caught up with this provision, so your student visa cannot be granted once the Minister became aware that this false information had been provided.*

83. Mr Jones submitted that the emphasised portion of this passage indicates the Tribunal was of the view that a document was bogus if it contained false information and was provided innocently by anyone, not just by the applicant. Whether that is correct can only be assessed by reference to the relevant context in which the statement was made. There are three relevant matters.

²⁸Outline of submissions for the Applicant, [24]

²⁹ [2014] FCA 1276 (Barker J)

³⁰ [2014] FCA 1276 at [58]

³¹Outline of submissions for the Applicant, [26]

- a) The first is the Tribunal's letter dated 16 June 2014 to the applicant. It referred to the applicant's having provided documents to the Tribunal which "*were bogus*", and noted that the details of the bogus document were provided to the applicant in the "*Department's decision on 9 August 2013*". That decision record referred to a bank statement purportedly from the National Bank of Pakistan in the name of the applicant's brother, and that, as a result of inquiries made of the bank, the bank verified "*the bank statement from NBP is a bogus document and there is no account with the details that were provided to the Department*".³²
- b) Second, there is the response the applicant gave to the Department after the applicant was alerted to the bogus document. The applicant apologised for having been "*made to submit the false documents by my brother. it [sic] is all is family dispute*", and he referred to the mother's affidavit.³³ The mother's affidavit states the mother gave money to the applicant's brother to deposit with the bank, but, instead, the applicant's brother bought property "*on her wife name and arranged the false document on his own name and sent those documents tho [sic] his brother. Even all this happened, I cannot go to the police to make the Report because he is my son*".³⁴ The applicant repeated the substance of that claim in his statutory declaration.³⁵
- c) Third, there is the applicant's response to the Tribunal on 24 September 2014. The applicant repeated he was not aware the document was false, and that he acted in good faith.

84. These matters reveal that the issues the applicant raised, both with the Department and the Tribunal, assumed the existence of matters that rendered the bank statement purposely false. As asserted by the applicant, the bank statement was created by the applicant's brother because of a family dispute; and, as accepted by the applicant, the document was not what it purported to be. That necessarily meant the document was purposely false, because it could only reasonably have been created by the brother for the purpose of creating the false

³² CB132

³³ CB84

³⁴ CB90

³⁵ CB96

impression there was money in the purported account. The applicant submitted he was unaware of the falsity of the bank statement, and that he had submitted it in good faith.

85. Considered in that context, the Tribunal's reference at the hearing to "*whether it was done innocently*" cannot reasonably be interpreted as manifesting ignorance by the Tribunal that for the bank statement to be a bogus document, it had to have the quality of purposeful falsity. The more probable explanation for the Tribunal's only referring at the hearing to "*whether it was done innocently*" was that it was a specific response to the particular submissions the applicant made, namely, that the false document "*was arranged*" (to use the language contained in the mother's affidavit) by the applicant's brother, in circumstances where the applicant in effect asserted the applicant's brother had prepared the bogus bank statement.
86. It is true the Tribunal did not in terms find the bank statement had the quality of purposeful falsity. That does not necessarily mean the Tribunal did not consider that question. Whether it did so or not is to be determined having regard to its reasons for decision as a whole, and the circumstances in which the Tribunal made its decision. I have already identified three matters which indicate that the bogus bank statement had the quality of purposeful falsity, and that it was understood by the applicant and the Tribunal that it did possess this quality. Further, the Tribunal was aware of the decision in *Trivedi v Minister for Immigration and Border Protection* which is authority for the proposition that, although it is not necessary for the applicant to be aware of the falsity of the information provided to the Minister, the information must have the quality of purposeful falsity.³⁶ It is true that the Tribunal referred to *Trivedi* only as authority for the proposition that the applicant did not have to be aware of the falsity. In my opinion, however, the Tribunal did so because the only issues raised by the applicant about the bogus bank statement was that he was unaware of the document's falsity, and that he acted in good faith.
87. I am not satisfied, therefore, that the Tribunal was unaware that for a document to be bogus it had to have the quality of purposeful falsity; and I am not satisfied that by not expressly making a finding that the

³⁶ (2014) 220 FCR 169

bogus bank statement had the quality of purposeful falsity, the Tribunal did not consider that question. In that regard, it may be relevant to note that the Tribunal in *Trivedi* did not expressly find that the document in question in that case had the quality of purposeful falsity. Buchanan J noted, however, that the Tribunal made findings that indicated the document contained information that was false or misleading in the requisite sense; and Buchanan J concluded the document “*was, in truth, a bogus document*”.³⁷ There is, in my opinion, no question that the Tribunal in the case before me referred to matters that were accepted or asserted by the applicant that indicated the bank statement was, in truth, a bogus document.

88. Even if, as the applicant submits, the Tribunal did not consider whether the bank statement had the quality of purposeful falsity, I would not grant any relief. The material before me indicates without a doubt that the applicant accepted and asserted matters which could reasonably have only indicated that the bank statement did have that quality. The mother’s affidavit stated that the false bank statement was prepared by the applicant’s brother; and it was prepared by the applicant’s brother in circumstances where the applicant’s mother gave the applicant’s brother money to deposit into a bank account but, instead of doing that, the brother used the money to buy a property in his wife’s name, and prepared a false bank statement. The applicant repeated the substance of this claim in his statutory declaration.

89. Ground 4, therefore, also fails.

90. Disposition

91. The applicant has failed on all of the grounds stated in the application. I propose, therefore, to order that the application be dismissed. I will also order that the Administrative Appeals Tribunal be substituted for the Tribunal as the second respondent.

I certify that the preceding forty-seven (47) paragraphs are a true copy of the reasons for judgment of Judge Manousaridis

³⁷(2014) 220 FCR 169 at [44] (Buchanan J)

Associate:

Date: 14 December 2016